

AFFIDAVIT

I, Robert E. Richardson, hereby depose and state as follows:

1. I am an Assistant United States Attorney ("AUSA") for the District of Massachusetts. As such I was responsible for prosecuting the case styled *United States v. Nygell Jones*, Criminal No. 07-10339-MLW, in which the defendant was charged with being a felon in possession of a firearm and ammunition. I make this affidavit in connection with the defendant's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence By a Person in Federal Custody (the "Motion").

2. In anticipation of a potential trial, I made efforts to learn whether *Giglio* material existed with respect to Boston Police Officer Rance Cooley, one of the four law enforcement officers present the night the firearm was recovered from the defendant (although he did not witness the recovery of the firearm from the defendant). I caused two inquiries to be made of the Boston Police Department, seeking with respect to Officer Cooley, among other things, any finding of misconduct reflecting on truthfulness or possible bias, any credible allegation of misconduct reflecting on truthfulness or possible bias that was the subject of a pending investigation, and any allegations that could not be substantiated, were found to be not credible, or which resulted in Officer Cooley's exoneration insofar as the allegations reflected on truthfulness or bias and were made by a prosecutor, magistrate judge, or judge. The first inquiry was made on November 26, 2007, and the second on May 14, 2008, the day the Court set trial in this matter for June 9, 2008 (subsequently rescheduled to June 16, 2008). On both occasions the Boston Police Department responded "none" with respect to each category of information.

3. I also sent internal emails on March 18, 2008 and May 16, 2008 to the criminal

AUSAs within the office seeking *Giglio* information of which anybody was aware regarding Officer Cooley. To the best of my belief, I did not receive any responses to either email.

4. I also believe I conducted a Westlaw search to see if I could find any cases in which the four officers present the night of the defendant's request had been the subject of negative credibility findings, including Officer Cooley. My best memory is that defense counsel asked particularly about the other three officers and that I did the Westlaw search as part of an inquiry before advising counsel on March 27, 2008, that I had made inquiry and been advised that none of the other three officers had been the subject of a disciplinary or judicial finding that reflects negatively upon his truthfulness. My best memory and belief is that I did the same Westlaw inquiry with respect to Officer Cooley and did not identify any negative credibility determinations.

5. Because I did this search on or before March 27, 2008, I did not see *Commonwealth v. Garden*, 451 Mass. 43, 49 (2008), which was decided on April 1, 2008 and in which the Supreme Judicial Court noted that the judge below in that case "was careful in his findings to point explicitly to those portions of Officer Cooley's testimony that he did not credit" In the decision below, which apparently is not part of the Westlaw database, the judge stated that he "[d]id not credit at all Cooley's testimony that he saw the muzzle of a gun through a partially open back seat" I was not aware of this determination at the trial of this case and therefore did not disclose it.

6. The defendant refers in the Motion to the fact that "about one month prior to the night of the defendant's arrest/apprehension the Boston Herald displayed the defendant's name and picture in an array of Boston's 10 Most Wanted Fugitives on its front page. Motion at

Continuation Page for Ground One. I believe the defendant is referring to the attached article retrieved from the Boston Herald.com archives, in which the following information was provided regarding the defendant:

WANTED FOR BREAKING AND ENTERING, GUN CHARGES IN
DORCHESTER: NYGELL JONES, 27, 5-foot10 [end of line cut off]

Nygell Kevin Jones is wanted for a number of gun, assault, breaking and entering and motor vehicle charges.

While I believe that, by the time this information appeared in the Herald, there was a warrant for the defendant's arrest based on the fact he had absconded from his federal supervised release, I believe the information in the Herald was based on interactions with, and matters being investigated by, local police, including the Boston Police Department. One of these matters, in particular, is reflected in the attached Boston Police Department report, which says, among other things, with respect to an incident occurring on March 13, 2007:

RESPONDED TO A RADIO CALL FOR A PERSON WITH A GUN AT 345 COLUMBIA ROAD. WHILE EN ROUTE TO 345 COLUMBIA ROAD, OFFICER ROSS FROM THE VK07 OBSERVED A BLACK MALE ABOUT 5'8 WEARING A WHITE LONG SLEEVE T-SHIRT AND HAIR IN PONY TAILS RUNNING UP BEHIND 333 COLUMBIA ROAD TOWARDS HAMILTON STREET. OFFICER CEPEDA THEN OBSERVED THE SAME MALE RUN BEHIND 23 HAMILTON STREET INTO THE BACK YARD. OFFICERS FOLLOWED THE MALE ON FOOT AS HE JUMPED SEVERAL FENCES AND RAN THROUGH SEVERAL BACK YARDS. OFFICER BAILEY THEN OBSERVED THE SAME MALE WHO[] HAD JUST TAKEN OFF HIS WHITE SHIRT AND NOW HAD ON A BLACK T-SHIRT JUMP ANOTHER FENCE INTO THE REAR OF 26 RICHFIELD STREET. OFFICER LAI K [SIC] KELLY ENTERED THE REAR OF 26 RICHFIELD STREET ANE OBSERVED THE SAME BLACK MALE EXITING THE CELLAR OF THE HOUSE. SUSPECT WAS THEN ASKED IF HE RESIDED AT 26 RICHFIELD STREET. HE STATED "NO 333 COLUMBIA ROAD" AS HE WAS GASPING FOR BREATH. SUSPECT PLACED UNDER ARREST FOR B/E ENTERING AND TRESPASSING.

* * *

OFFICER ROSS SPOKE TO THE HOME OWNER WHO[] IS KNOWN TO THE COMMONWEALTH WHO STATED HE WAS IN THE REAR YARD WORKING ON A MOTOR VEHICLE WHEN A BLACK MALE WITH A BLACK T-SHIRT ON JUMPED THE FENCE AND SAID "SHH" MA[D]E A MOTION TO BE QUIET AND THEN ENTERED HIS CELLAR.

The report indicates that the police were not able to locate the 911 caller that day. On March 14, 2007, however, Detective Schroeder spoke to her. According to the report:

The female victim stated to Detective Schroeder that she and the suspect had a verbal argument after she rejected him. The victim continued to state that he must have liked the way I looked. The victim got inside of her motor vehicle and the suspect was banging on the driver's side window stating move your shit from the front of my house. The suspect was banging on the window with a silver handgun the victim believes to be a revolver.

The report further indicates that, on March 14, 2007, a man from a construction company turned in to the Boston Police a handgun that had been found in a construction yard at 36 Westwood Street Westwood Street being a street that runs off of Richfield Street. I have spoken to the Boston Police Ballistics Unit and learned that the firearm that was turned in was a gray .40 caliber semi-automatic gun. I have spoken to the Latent Print Section and learned that one print of potential value was found on the firearm but the examiner, in comparing it to the prints of the defendant, could neither identify nor eliminate the defendant as having left the print.

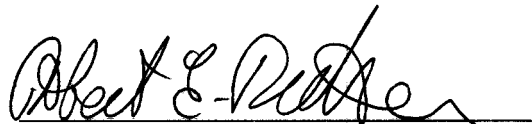
The report further indicates that the victim was shown a photo lineup consisting of eight photographs on May 10, 2007, and selected a photograph of the defendant.

7. Review of a Massachusetts Criminal History Systems Board record for the defendant that appears to have been printed on August 21, 2007, it appears that a warrant had issued for the defendant on an "operating after" case in Quincy District Court on or about July 20, 2007; a warrant had issued for him in the Roxbury District Court for an "operating after" case on or

about June 12, 2007; and that the defendant had defaulted in Dorchester District Court on or about May 14, 2007 with respect to the breaking and entering and trespassing case resulting from the events of March 13, 2007.

8. As of November 25, 2008, the U.S. Probation Department had petitions alleging three violations of the defendant's supervised release in *United States v. Nygell Jones*, Criminal No. 03-10248-WGY. The violations alleged were essentially as follows: (1) that the defendant had violated the condition that he not commit another federal, state, or local crime by engaging in the conduct described in the Boston Police report regarding the events of March 13, 2007; (2) that the defendant violated the special condition that he participate in an inpatient or outpatient program for substance abuse as directed by Probation; and (3) that the defendant violated the condition that he not commit another federal, state, or local crime by engaging in the conduct that was the subject of his conviction before this Court.

Signed under the pains and penalties of perjury this ~~28~~ day of September, 2010.


Robert E. Richardson



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THE BEAT ; Meet Hub's worst of the worst

[All Editions]

Boston Herald - Boston, Mass.
Author: MICHELE MCPHEE
Date: Jun 25, 2007
Start Page: 2
Section: NEWS
Text Word Count: 826

Document Text

A Brockton man allegedly pistol-whips his former roommate before throwing him down a flight of stairs. An ex-con already serving violations leaves a bullet proof vest and a loaded gun behind in his Boston apartment.

These men are on a list of Boston Police Most Wanted Felons - a rolling roster of suspects on the lam from the BPD's Fugitive variety of crimes. Readers are urged to call 1-800-494-TIPS or text TIP to CRIME, (or 27463) to help Boston police catch the worst." Watch the Herald for updates.

WANTED FOR ASSAULT: CHAUNCY RAINEY, 28, 6-foot-2, 190 pounds

Cops arrived at the intersection of School and Harvard streets in Dorchester on an April afternoon and found a 24-year-old man in blood, after being shoved down stairs. He told cops his assailant was a roommate he was forced to push out, Chauncy Raine, last spotted in Brockton.

WANTED FOR FLOODING CHARLESTOWN WITH HEROIN: DAVID RODRIGUEZ aka TORICIO COTTIOLLO, 27, 5-foot-8

The Bunker Hill housing projects have long been plagued with drugs and violence, and Boston police believe David Rodriguez is at the center of the mayhem. He is being sought for dealing heroin out of an apartment in the projects, as well as plying his drugs in East E Chelsea.

WANTED FOR DRUG DEALING, GUN CHARGES: STEVEN WARREN, 34, 5-foot- 11, 190 pounds

Armed with a warrant, BPD cops burst into 95 Milton Ave. in Dorchester on a cold November day last year after receiving info Steven Warren was allegedly dealing drugs out of a bedroom in his mother's house. Police recovered two kilos of coke hidden in a can; two loaded guns, and nearly \$23,000 in cash, but Warren was not home.

WANTED FOR DRUG DEALING IN HYDE PARK: DENNIS REYNOLDS, 22, 5-foot-8, 170 pounds

On a sultry day in March, Dennis Reynolds was under observation by the Boston police drug unit when they saw him allegedly handing drugs to a woman on a Hyde Park street corner. It was apparently not the first time. A BPD frisk search netted 19 packages of drugs on his arrest on drug charges, he jumped bail and has been on the run since.

mmcphee@bostonherald.com

WANTED FOR DOMESTIC VIOLENCE AND BRUTAL STABBING IN ROXBURY: JUDEX NAPOLEAN, 20, 5-foot-7, 145 pounds

First Judex Napoleon allegedly attacked his estranged girlfriend by wrapping his hands around her neck, yelling: "I'm going to kill you." He later allegedly plunged a knife into her new boyfriend. When a witness tried to intervene, Napoleon is said to have picked up a metal instrument called a "cha-cha" and beat the bystander with it. He has been on the lam since a warrant was issued.

WANTED FOR ARMED ROBBERY AT A KENMORE SQUARE BAKERY: PAUL CROMWELL, 42, 5-foot-6, 150 pounds

The clerks at Truly Jorg's Patisserie on Commonwealth Avenue were crying one day in May when BPD officers arrived minutes after the store had been robbed at gunpoint. The robber grabbed a female who was placing his pastry in a box, grunting: "This is a robbery." After taking everything in the register, he allegedly choked her and pulled her hair before fleeing the store. The victim and other witnesses identified Cromwell's photo out of a lineup and he has been wanted since.

UPDATE: Arrested this weekend.

WANTED FOR PAROLE VIOLATIONS: JOHN WILLIS, 36, 6-foot-1, 260 pounds

Last month, police were hunting John Willis on parole violations and they suspected he was carrying a weapon. They searched his Boulevard home and found a bullet-proof vest, a fully loaded Glock 9 mm and an extra clip, and two John Wayne-style guns but he was nowhere to be found.

WANTED FOR BREAKING AND ENTERING, GUN CHARGES IN DORCHESTER: NYGELL KEVIN JONES, 27, 5-foot-10, 210 pounds

Nygell Kevin Jones is wanted for a number of gun, assault, breaking and entering and motor vehicle charges.

WANTED FOR SHOOTING: CURTIS JAMAL WHITE, 18, 5-foot-8, 150 pounds

On June 17, a resident of 6 Codman Park in Roxbury heard a scuffle in the hallway and looked through his peephole to see a man with a handgun scowling: "I want that chain!" The victim, 20, was shot in the leg, and the assailant, who witnesses said was Curtis Jones, fled on the run.

UPDATE: Arrested this weekend.

CONVICTED COP KILLER WANTED FOR PROBATION VIOLATIONS: THOMAS SHAY, 34, 5-foot-9, 145 pounds

Dressed in drag to avoid capture, convicted cop killer Thomas Shay is wanted for a bevy of probation violations after he served time behind bars for planting the bomb that killed BPD bomb squad cop Jeremiah Hurley and maimed his partner, Frank Foley. Shay has been busted on charges of attacking another city cop; posing as a massage therapist to sexually assault college students; and distributing drugs to minors in Spencer.

- mmcphee@bostonherald.com

Credit: By MICHELE MCPHEE

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Abstract (Document Summary)

These men are on a list of Boston Police Most Wanted Felons - a rolling roster of suspects on the lam from the BPD's Fugitive list for a variety of crimes. Readers are urged to call 1-800-494-TIPS or text TIP to CRIME, (or 27463) to help Boston police catch the worst." Watch the Herald for updates.

First Judex Napoleon allegedly attacked his estranged girlfriend by wrapping his hands around her neck, yelling: "I'm going to kill you." He later allegedly plunged a knife into her new boyfriend. When a witness tried to intervene, Napoleon is said to have picked up a metal instrument called a "cha-cha" and beat the bystander with it. He has been on the lam since a warrant was issued.

The clerks at Truly Jorg's Patisserie on Commonwealth Avenue were crying one day in May when BPD officers arrived minutes after the store had been robbed at gunpoint. The robber grabbed a female who was placing his pastry in a box, grunting: "This is a robbery." After taking everything in the register, he allegedly choked her and pulled her hair before fleeing the store. The victim and other witnesses identified [PAUL CROMWELL]'s photo out of a lineup and he has been wanted since.

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Edward F Davis, Police Commissioner

INCIDENT SUMMARY REPORT - DEPARTMENT USE ONLY

GENERAL INFORMATION

070135784	03/13/2007 08:03 PM	011	ASSAULT D/W - GUN	Cleared By Arrest
0	03/13/2007 08:02 PM	011	345 COLUMBIA RD	B&E RESIDENCE DAY - NO FORCE
1	03/13/2007 08:02 PM	011	345 COLUMBIA RD	ASSAULT D/W - GUN

OFFICER INFORMATION

0	HK01F	3	SHAWN M O'NEIL	11440	12113	WAYNE F. LANCHESTER	11046
1	H809	3	PAUL G SCHROEDER	8776	1225	ALFREDO ANDRES	11207

PERSON INFORMATION

VICTIM

0	KNOWN TO THE COMMONWEALTH						
1	KNOWN TO THE COMMONWEALTH			N/A	N/A		

REPORTER

0	PO O'NEIL/PO MEDINA/SGT. DALRYMPLE	40 GIBSON STREET MA					
1	SGT DETECTIVE ROBERTSON ET AL	40 GIBSON ST DORCHESTER MA 02122 -0000					

WITNESS

0	PO K KELLEY	40 GIBSON STREET MA					
0	PO FABIANO	304 WARREN STREET MA					
0	PO LAI	40 GIBSON STREET MA					
0	PO BAILEY	304 WARREN STREET MA					
0	PO ROSS	304 WARREN STREET MA					
0	PO CEPEDA	40 GIBSON STREET MA					

OFFENDER

0	ARRESTED	JONES, NYGELL KEVIN		BLACK NON-HISPANIC			
1	SUSPECT	JONES, NYGELL KEVIN		BLACK NON-HISPANIC			

NARRATIVE INFORMATION

Requested by: 9000400

Requested on: 09/17/2010 03:57:13 PM

NARRATIVE FOR ORIGINAL REPORT WRITTEN 03/13/2007 08:07 PM: ON TUESDAY 3/13/2007 OFFICERS O'NEIL AND MEDINA ASSIGNED TO THE HK01F UNIT WERE UNDER THE DIRECT SUPERVISION OF THE H911 SGT. DALRYMPLE. RESPONDED TO A RADIO CALL FOR A PERSON WITH A GUN AT 345 COLUMBIA ROAD. WHILE ENROUTE TO 345 COLUMBIA ROAD, OFFICER ROSS FROM THE VK07 OBSERVED A BLACK MALE ABOUT 5'8" WEARING A WHITE LONG SLEEVE T-SHIRT AND HAIR IN PONY TAILS RUNNING UP BEHIND 333 COLUMBIA ROAD TOWARDS HAMILTON STREET. OFFICER CEPEDA THEN OBSERVED THE SAME MALE RUN BEHIND 23 HAMILTON STREET INTO THE BACK YARD. OFFICERS FOLLOWED THE MALE ON FOOT AS HE JUMPED SEVERAL FENCES AND RAN THROUGH SEVERAL BACK YARDS. OFFICER BAILEY THEN OBSERVED THE SAME MALE WHOM HAD JUST TAKEN OFF HIS WHITE SHIRT AND NOW HAD ON A BLACK T-SHIRT JUMP ANOTHER FENCE INTO THE REAR OF 26 RICHFIELD STREET. OFFICER LAUK KELLY ENTERED THE REAR OF 26 RICHFIELD STREET AND OBSERVED THE SAME BLACK MALE EXITING THE CELLAR OF THE HOUSE. SUSPECT WAS THEN ASKED IF HE RESIDED AT 26 RICHFIELD STREET HE STATED "NO" AS HE WAS GASPING FOR BREATH, SUSPECT PLACED UNDER ARREST FOR B&E ENTERING AND TRESPASSING. OFFICER BAILEY BACK TRACKED AND FOUND THE WHITE LONG SLEEVE T-SHIRT UNDER THE REAR PORCH OF 24 RICHFIELD STREET. OFFICERS OBSERVED SEVERAL NO TRESPASSING SIGNS ON THE PROPERTIES WHERE THE SUSPECT HAD FLED THROUGH. OFFICER ROSS SPOKE TO THE HOME OWNER WHOM IS KNOWN TO THE COMMONWEALTH, WHO STATED HE WAS IN THE REAR YARD WORKING ON A MOTOR VEHICLE WHEN A BLACK MALE WITH A BLACK T-SHIRT ON JUMPED THE FENCE AND SAID "SHIT" MAKE A MOTION TO BE QUIET AND THEN ENTERED HIS CELLAR. OFFICERS SEARCHED THE AREA FOR THE FEMALE VICTIM THAT HAD CALLED 911 TO MAKE THE INITIAL COMPLAINT ABOUT A FIREARM, TO NO AVAIL.

NARRATIVE FOR SUPPLEMENT NUMBER 1 WRITTEN 05/10/2007 11:13 PM: On Tuesday March 13, 2007 at 6:03 PM Officers from Area C-11 responded to 345 Columbia Road on a radio call for a person with a gun. After a foot pursuit the suspect Mr. Jones was apprehended at 26 Richfield Street and placed under arrest for B&E Residence Day-Time. The female victim left the area before an identification could be made of Mr. Jones as to the person with the gun.

On Wednesday March 14, 2007 while in Dorchester District Court Detective Schroeder was given the name & phone number of the female victim from the incident on Tuesday March 13, 2007 at 345 Columbia Road. Detective Schroeder phoned the victim and had a conversation with her about the incident that occurred on Tuesday March 13, 2007.

The female victim stated to Detective Schroeder that she and the suspect had a verbal argument after she rejected him. The victim continued to state that he must have liked the way she looked. The victim got inside of her motor vehicle and the suspect was banging on the driver's side window stating "move your shirt from in front of my house. The suspect was banging on the window with a silver handgun the victim believes to be a revolver.

On Wednesday March 14 2007 at 9:15 PM Mr. James Thomas from Suel Construction Company located at [REDACTED] turned in a silver Kahr 40 caliber firearm that was found in the construction yard over to Detective Coleman at Area C-11. Westwood Street runs off of Richfield Street. The firearm was logged in under CC# 070-137-565.

On Thursday May 10, 2007 at about 7:45 PM Sergeant Detective Robertson & Detective Schroeder met with the victim at her home. At 7:50 PM Sgt Det. Robertson read the victim a Boston Police Witness Preparation Form- Photo and Live Lineups. The victim viewed Boston Police Department lineup #07-000348 containing eight photos and identified photo number three. The victim made a statement to Sgt Det. Robertson that was printed on the bottom of the paper by Sgt Det. Robertson and signed by him.

Photo number three is one Nygell K. Jones Black male DOB [REDACTED] of [REDACTED]